



## APPENDICES

### Appendix: River Navigators and Community Partners—Contact Information

#### BLACKSTONE-WOONASQUATUCKET RIVERS

##### River Navigator

Ms. Johanna Hunter  
C/O USGS  
275 Promenade, Suite 150  
Providence, Rhode Island 02908  
401-331-9050 x 13, Fax: 401-331-9062  
Hunter.Johanna@epa.gov

##### Community Partners:

Ms. Jane Sherman  
The Providence Plan  
56 Pine Street, Suite 3B  
Providence, Rhode Island 02903  
401-455-8880, Fax: 401-331-6840  
jsherman@providenceplan.org

Mr. Michael Creasey  
Blackstone River Valley  
National Heritage Coordinator  
One Depot Square  
Woonsocket, RI 02895  
401-762-0250, Fax: 401-762-0530  
michael\_creasey@nps.gov

#### CONNECTICUT RIVER

##### River Navigator:

Mr. Dan Burke  
103 East Plumtree Rd.  
Sunderland, Massachusetts 01375  
413-548-9420 x34, Fax: 413-548-9746  
dan\_burke@fws.gov

##### Community Partner:

Ms. Whitty Sanford  
Connecticut River Watershed Council  
One Ferry Street  
Easthampton, MA 01027  
413-529-9500, Fax: 413-529-9501  
crwc@crocker.com

#### CUYAHOGA RIVER

##### Websites:

www.noaca.org  
www.epa.gov/glnpo/aoc/cuyahoga.html  
www.epa.state.oh.us/dsw/rap/cuyahog.html  
www.ohiocanal.org

##### River Navigator:

Mr. Steven R. Davis  
2179 Everett Rd.  
Peninsula, Ohio 44264  
330-657-2529, Fax: 330-657-2198  
stevendavis@fs.fed.us

##### Community Partner:

Ms. Kay Carlson  
Executive Director  
Cuyahoga River Remedial Action Plan , NE Ohio  
Area-wide Coordinating Agency  
1299 Superior Avenue  
Cleveland, OH 44114-3204  
216-241-2414 x253, Fax: 216-621-3024  
kcarlson@mpo.noaca.org

#### DETROIT RIVER

##### Website:

<http://www.tellusnews.com/ahr>

##### River Navigator:

Dr. John Hartig  
Greater Detroit American Heritage River Initiative  
US Coast Guard, Marine Safety Office  
110 Mt. Elliott Ave.  
Detroit, MI 48207-4380  
313-568-9594, Fax: 313-568-9581  
jhartig@msodetroit.uscg.mil

##### Community Partner:

Mr. Mark Breederland  
Michigan Sea Grant Extension  
21885 Dunham Road, Suite 12  
Clinton Township, MI 48036  
810-989-6323, Fax: 810-985-3557  
breedermark@msue.msu.edu

#### HANAIEI RIVER

##### River Navigators:

Jan Surface, Watershed Coordinator  
Makaala Kaaumoana, Program Coord.  
Johanna Gomez, Operations Coord.  
P.O. Box 1285  
Hanalei, HI 96714  
808-826-1985, Fax: 808-826-7975  
jansurface@iglide.net  
makaala@hawaiian.net  
hanaleiriver@hawaiian.net

**HUDSON RIVER****Website:**

<http://www.dec.state.ny.us/website/hudson>

**River Navigator:**

Mr. J. Eric Scherer  
C/O New York State Parks - Taconic Region  
P.O. Box 308  
Staatsburg, NY 12580  
845-889-4100 x306, Fax: 845-889-8321  
[eric.scherer@ny.usda.gov](mailto:eric.scherer@ny.usda.gov)

**Community Partner:**

Ms. Eileen Murphy  
New York State Department of Environmental  
Conservation  
Legislative Affairs Unit  
Room 602, 50 Wolfe Road  
Albany, NY 12233-1050  
518-457-6724, Fax: 518-457-3945  
[emmurphy@gw.dec.state.ny.us](mailto:emmurphy@gw.dec.state.ny.us)

**LOWER MISSISSIPPI RIVER****Website:**

<http://communities.msn.com/LowerMississippiAmericanHeritageRiverAlliance>

**River Navigator:**

CAPT Robert D. Innes  
C/O Commander (a)  
Eighth Coast Guard District  
501 Magazine Street  
New Orleans, LA 70130  
504-828-4028, Fax: 504-828-4028  
[ebbetsfield@email.msn.com](mailto:ebbetsfield@email.msn.com)

**Community Partners:**

Ms. Cindy Buchanan  
Deputy Director, Department of Public Works  
125 North Main Street  
Memphis, TN 38103  
901-576-7110, Fax: 901-576-7116  
[cyntha@memphis.magibox.net](mailto:cyntha@memphis.magibox.net)

Ms. Angela Falgoust, Executive Director  
Tourist Commission of Ascension Parish  
6470 Highway 22, Suite A  
Sorrento, LA 70778  
888-775-7990 or 225-675-6550,  
Fax: 225-675-6558  
[afalgou@eatel.net](mailto:afalgou@eatel.net)

Ms. Linda S. Calvert  
New Orleans City Hall  
Suite 8E06  
1300 Perdido St.  
New Orleans, LA 70112  
504-565-8115  
fax: 504-565-6589  
[Lindac@new-orleans.la.us](mailto:Lindac@new-orleans.la.us)

**UPPER MISSISSIPPI RIVER****Website:**

<http://www/mvs.usace.army.mil/pm/riversweb/mainframe.htm>

**River Navigator:**

Mr. Owen Dutt  
US Army Corps of Engineer District  
1222 Spruce Street  
St. Louis, MO 63103-2833  
314-331-8450/8451, Fax: 314-331-8774  
[owen.dutt@mvs02.usace.army.mil](mailto:owen.dutt@mvs02.usace.army.mil)

**Community Partner:**

The Honorable Robert Moloney  
Mayor, City of Hannibal  
320 Broadway  
Hannibal, MO 63401  
573-221-0111, Fax: 573-221-8191  
[cityhall@nemonet.com](mailto:cityhall@nemonet.com)

**NEW RIVER****Website:**

<http://www.nrcp.org>

**River Navigator:**

Mr. Ben Borda  
U. S. Army Corps of Engineers  
Huntington District  
502 - 8th Street  
Huntington, WV 25701-2070  
304-529-5712, Fax: 304-529-5136  
[benb@lrh.usace.army.mil](mailto:benb@lrh.usace.army.mil)

**Community Partner:**

Mr. Patrick Woodie  
Executive Director  
New River Community Partners  
P.O. Box 1897  
Sparta, NC 28675  
336-372-8118, Fax: 336-372-8135  
[pwoodie@skybest.com](mailto:pwoodie@skybest.com)

**POTOMAC RIVER****Website:**

<http://www.potomacfriends.org>

**River Navigator:**

Dr. Glenn Kinser  
National Park Service  
P.O. Box 447  
Shepherdstown, WV 25443  
304-535-2906, Fax: 304-535-6059  
[Glenn\\_Kinser@nps.gov](mailto:Glenn_Kinser@nps.gov)

**Community Partners:**

Mr. Wilton Corkern  
 Chairman of the Board  
 Friends of the Potomac  
 3400 Bryan Point Road  
 Accokeek, MD 20607  
 301-283-2113, Fax: 301-283-2049  
 Wcorkern@accokeek.org

Ms. Anne Crawford White  
 Project Director-Leadership Potomac  
 Friends of the Potomac  
 1730 K Street NW, Suite 300  
 Washington, DC 20006  
 (202) 467-4000, Fax: (202) 467-4007  
 Anne@potomacfriends.org

Ms. Leigh Dunkelberger,  
 Programs Coordinator  
 Friends of the Potomac  
 1730 K Street NW, Suite 300  
 Washington, DC 20006  
 (202) 467-4000, Fax: (202) 467-4007  
 Leigh@potomacfriends.org

**RIO GRANDE RIVER****River Navigator:**

Mr. Miguel Flores  
 300 East 8th Street, Suite 914  
 Austin, TX 78701  
 512-916-5050, Fax: 512-477-3701  
 miguel.flores@gsa.gov

**Community Partners:**

Honorable Elizabeth G. Flores  
 Mayor, City of Laredo  
 P.O. Box 579  
 Laredo, Texas 78042-0579  
 956-791-7400, Fax: 956-791-7498  
 gmayor@ci.laredo.tx.us

Mr. Tyrus Fain  
 President, Rio Grande Institute  
 P.O. Box 183  
 Marathon, TX 79842  
 512-477-3700, Fax: 512-477-3701  
 tfain13345@aol.com

**ST. JOHNS RIVER****Website:**

<http://volusiawild.com> and Click on AHR

**River Navigator:**

Ms. Barbara Elkus  
 US Environmental Protection Agency  
 1200 Pennsylvania Avenue, NW (4501F)  
 Washington, DC 20460  
 202-260-3814, Fax: 202-401-0590  
 elkus.barbara@epa.gov

**Community Partner:**

Ms. Isabel Pease  
 Office of Mayor John Delaney  
 117 West Duval Street, Suite 400  
 Jacksonville, FL 32202  
 904-630-1786, Fax: 904-630-2391  
 ipease@coj.net

**UPPER SUSQUEHANNA-LACKAWANNA RIVERS****Website:**

[www.paheritageriver.org](http://www.paheritageriver.org)

**River Navigator:**

Mr. Alex Rogers  
 Fourth Floor Mezzanine  
 The Stegmaier Building  
 7 North Wilkes-Barre Boulevard  
 Wilkes-Barre, PA 18702  
 570-970-2840, Fax: 570-970-7941  
 arogers@epix.net

**Community Partner:**

Mr. Tom Williams  
 Office of Representative Paul E. Kanjorski  
 The Stegmaier Building  
 7 North Wilkes-Barre Blvd, Suite 400M  
 Wilkes-Barre, PA 18702-5283  
 570-825-2200, Fax: 570-825-8685  
 Tom.williams@mail.house.gov

**WILLAMETTE RIVER****Website:**

[www.oregonwri.org](http://www.oregonwri.org)

**River Navigator:**

Mr. Paul Jeske  
 USDI Bureau of Land Management  
 Salem District Office  
 1717 Fabry Road SE  
 Salem, OR 97306  
 503-375-5644, Fax: 503-315-5970  
 Paul\_Jeske@blm.gov

**Community Partner:**

Mr. Rick Bastasch, Director  
 Willamette Restoration Initiative  
 1717 Fabry Road SE  
 Salem OR 97306  
 503-375-5718, Fax: 503-315-5970  
 Richard\_Bastasch@blm.gov



## American Heritage River Partners, Sponsoring Federal Agencies, and Priorities

### BLACKSTONE-WOONASQUATUCKET RIVERS (MA, RI)

#### Partners:

The Providence Plan (Woonasquatucket) and The Blackstone River Valley National Heritage Corridor (Blackstone)

#### Sponsoring Federal Agency:

US Environmental Protection Agency

#### Keystone Projects:

Stadium Theatre Performing Arts Center Restoration  
Brownfields to Greenfields/Riverside Mills  
Blackstone Headwaters Empact Grant

### CONNECTICUT RIVER (CT, VT, NH, MA)

Partners: The Connecticut River Watershed Council, Connecticut River Joint Commissions, Connecticut River Conservation Districts Coalition, the states of CT, MA, VT, and NH, New England Federal Partners for Natural Resources (14 federal agencies), Riverfront Recapture, Science Center of Connecticut, and others.

#### Sponsoring Federal Agency:

US Environmental Protection Agency

#### Keystone Projects:

The Colt Gateway  
Watershed Riverine Habitat Restoration Initiative

### CUYAHOGA RIVER (OH)

#### Partners:

Cuyahoga River Remedial Action Plan, Northeast Ohio Area-wide Coordinating Agency, Ohio and Erie Canal Association, Northeast Ohio Four County Regional Planning and Development Organization, and Upper Cuyahoga River Watershed Taskforce.

#### Sponsoring Federal Agency:

US Department of Agriculture, Forest Service

#### Keystone Projects:

Conservation Easements  
Coordinated Signs and Interpretive Displays  
Debris Harvester

### DETROIT RIVER (MI)

#### Partners:

The Greater Detroit American Heritage River Initiative is led by a four member Executive Committee: Mr. Peter Stroh, Director and former CEO of The Stroh Companies, Inc. and Chairman of the Executive Committee; Detroit Mayor Dennis Archer; Wayne County Executive Edward McNamara; and Brownstown Supervisor W. Curt Boller. A multi-stakeholder Steering Committee, made up of community, business, governmental, and nonprofit partners, provides advice to the Executive Committee. Project management and administrative support is provided by Metropolitan Affairs Coalition, a public-private partnership of business, labor, and government leaders.

#### Sponsoring Federal Agency:

US Department of Transportation's St. Lawrence Seaway Development Corporation, the US Coast Guard, and Federal Highway Administration.

#### Keystone Projects:

Downriver Linked Greenways – Flat Rock East-West Connector  
Restoration of Belle Isle's Flynn Pavilion and Canoe/Bike Rental Facility  
Restoration of Belle Isle Shelter-Comfort Stations

### HANALEI RIVER (HI)

#### Partners:

University of Hawaii, US Army Corps of Engineers, US Department of Commerce's Economic Development Administration, Environmental Protection Agency, US Department of Agriculture (Farm Services Agency, Natural Resources Conservation Service, Forest Service, and Rural Development), US Department of the Interior (Fish and Wildlife Service, US Geological Survey, and National Park Service), US Department of Transportation's Federal Highway Administration, Federal Emergency Management Agency, and Small Business Administration.

#### Sponsoring Federal Agency:

US Department of Agriculture, Forest Service

#### Keystone Projects:

Hanalei River Cutoff Repair  
Riparian Corridor Protection  
Hanalei Watershed Master Plan

## HUDSON RIVER (NY)

### Partners:

The State of New York, Hudson River Heritage Council, Hudson River Valley Greenway Council and Conservancy, Scenic Hudson, Clearwater Sloop, Hudson River Foundation, Open Space Institute, Westchester County, the Federal Coordinating Committee, Hudson Valley Marine Trade Association, and others.

### Sponsoring Federal Agency:

US Department of Agriculture,  
Natural Resources Conservation Service

### Keystone Projects:

- Promote Federal Dialogue on Wetland Permit Issues
- Improve public access at Schodack Island State Park
- Facilitate transfer of Turkey Pt. Light Attendant Station to the State of NY

## LOWER MISSISSIPPI RIVER (TN, LA, MS)

### Partners:

11 Louisiana parishes (Ascension, Baton Rouge, Iberville, Jefferson, Orleans, Plaquemines, St. Bernard, St. Charles, St. James, St. John the Baptist, and West Baton Rouge), and the City of Memphis and Shelby County, Tennessee.

Note: Natchez (Adams County) and Vicksburg (Warren County), Mississippi have received opt-in approval by the AHR Interagency Committee.

### Sponsoring Federal Agency:

US Department of Transportation,  
US Coast Guard

### Keystone Projects:

- Memphis Riverfront Development
- Nonconnah Creek Restoration and Greenway Trails
- Mississippi River Trail Completion
- Historic New Orleans High School Vocational Program Improvement

## UPPER MISSISSIPPI RIVER (MN,WI, IL, MO, IA)

### Partners:

A 13-member Interim Steering Committee organization represents the 58 designated river communities. Mayor Robert Moloney of Hannibal, Missouri Chairs the Committee.

### Sponsoring Federal Agency:

US Army Corps of Engineers

### Keystone Projects:

- Mississippi River Discovery Center, Riverwalk, and Amenities, Dubuque, IA
- Eads Bridge Pedestrian Promenade, St. Louis, MO
- Nahant Preserve, Education and Recreation, Davenport, IA

## NEW RIVER (NC, VA,WV)

### Partners:

New River Community Partners — a 25-member Board of Directors includes grassroots leaders, small business owners, elected officials, educators, chambers of commerce directors, landowners, natural resource management professionals, and historic preservationists from North Carolina, Virginia and West Virginia.

### Sponsoring Federal Agency:

US Army Corps of Engineers

### Keystone Projects:

- Sustainable Agriculture Initiative
- Hinton/Summers County Economic Development Initiative
- Christiansburg Institute

## POTOMAC RIVER (MD, VA,WV, PA, DC)

Partners: Friends of the Potomac is the lead community partner, a broad-based watershed nonprofit organization with members representing business and agriculture.

### Sponsoring Federal Agency:

US Department of the Interior,  
National Park Service

### Keystone Projects:

- Potomac Heritage Tourism Initiative
- Leadership Potomac Training
- Petersburg, WV, Water Intake Repair

## RIO GRANDE (TX)

Partners: The Consortium of the Rio Grande (CoRio), composed of communities and counties in Texas that promoted the river's designation, and the Rio Grande Institute, a non profit organization providing capacity building and information services to river communities.

### Sponsoring Federal Agency:

US Environmental Protection Agency

### Keystone Projects:

- Rio Grande Riverpark, El Paso
- Resaca Restoration Demonstration Project, Brownsville
- El Portal Riverfront Project, Laredo

**ST. JOHNS RIVER (FL)**

**Partners:** The St. Johns River AHR effort is coordinated by a watershed-wide Steering Committee, which is supported by three basin advisory committees. Each committee includes representatives of the various stakeholder groups supporting river revitalization.

**Sponsoring Federal Agency:**

US Environmental Protection Agency

**Keystone Projects:**

St. Johns River Eco-Heritage Corridor  
The Preservation Project, Jacksonville

**UPPER SUSQUEHANNA-LACKAWANNA (PA)****Partners:**

Congressman Paul E. Kanjorski, County Commissioners in the watershed, Greater Wilkes-Barre Chamber of Business and Industry, Economic Development Council of Northeastern Pennsylvania, Susquehanna Economic Development Agency, Wilkes University, King's College, Delaware and Lehigh National Corridor, Lackawanna River Corridor Association, Wyoming Valley Sanitary Authority, Friends of the Nescopeck, Pennsylvania Environmental Council, and Eastern Pennsylvania Coalition of Abandoned Mine Reclamation.

**Sponsoring Federal Agency:** US Department of Agriculture, Natural Resources Conservation Service

**Keystone Projects:**

Resolve Combined Storm  
and Sewer Overflow Problem  
Develop Wyoming Valley Educational  
and Recreation Complex

**WILLAMETTE RIVER (OR)****Partners:**

Oregon Governor John Kitzhaber's Willamette Restoration Initiative (WRI). WRI's Board of Directors, chaired by Paul Risser, President, Oregon State University, has members from business, agriculture, state and local government, watershed councils, conservation groups, and other leaders from around the basin.

**Sponsoring Federal Agency:**

US Department of the Interior, Bureau of Land Management, with support from US Department of Agriculture, Forest Service; US Department of Commerce, National Marine Fisheries Service; and US Fish and Wildlife Service

**Keystone Projects:**

Watershed Sign Project  
McKenzie River Confluence Restoration  
Habitat Restoration and Protection

## List of the 126 Nominated Rivers

**ALABAMA**

Cahaba River  
Chattahoochee River  
Coosa River

**ARIZONA**

Santa Cruz River

**ARKANSAS**

Arkansas River  
(two applications)  
Ouachita River

**CALIFORNIA**

Gualala River  
(Nomination withdrawn)  
Lower American River  
San Joaquin River  
San Luis Rey River  
Santa Clara River  
Santa Rosa Creek

**COLORADO**

Gunnison River  
(North Fork)  
South Platte River  
Arkansas River

**CONNECTICUT**

Minaus River  
Connecticut River  
(Designated)

**DELAWARE**

Broad Creek  
Delaware River

**DISTRICT OF COLUMBIA**

Anacostia River  
Potomac River  
(Designated)

**FLORIDA**

Choctawhatchee River  
Everglades  
St. Johns River  
(Designated)  
St. Lucie River

**GEORGIA**

Chattahoochee River  
Coosa River  
Savannah River

**HAWAII**

Hanalei River  
(Designated)

**IDAHO**

Clearwater River

**ILLINOIS**

Chicago-Illinois River  
Mississippi River  
(in Dubuque)  
(Designated)  
Kaskaskia River  
Ohio River  
Upper Mississippi River  
(two applications)  
(Designated)

**INDIANA**

Ohio River  
Ohio River-Pigeon Creek  
St. Joseph River

**IOWA**

Cedar River  
Mississippi River  
(in Dubuque)  
(Designated)  
Missouri River  
(two applications)

**KANSAS**

Arkansas River  
Missouri River

**KENTUCKY**

Licking River  
Ohio River  
(two applications)

**LOUISIANA**

Lower Mississippi River  
(Designated)  
Ouachita River

**MARYLAND**

Anacostia River  
Lower Susquehanna River  
Patuxent River  
Potomac River  
(Designated)

**MASSACHUSETTS**

Acushnet River  
Blackstone-  
Woonasquatucket River  
(Designated)  
Connecticut River  
(Designated)  
Merrimack River  
Mystic River  
South River  
Taunton River  
Westfield River  
Winnepesaukee River

**MICHIGAN**

Detroit River  
(Designated)  
Grand River  
Kalamazoo River  
Muskegon River  
St. Joseph River  
St. Mary's River

**MINNESOTA**

Minnesota River  
Mississippi River-  
(Minneapolis-St. Paul)  
St. Louis River  
Upper Mississippi River  
(Designated)

**MISSOURI**

Cold Water Creek  
Missouri River  
Osage River  
Upper Mississippi River  
(Designated)

**MONTANA**

Clearwater River  
Missouri River  
Yellowstone River

**NEBRASKA**

Missouri River

**NEW HAMPSHIRE**

Connecticut River  
(Designated)  
Cocheco River  
Merrimack River  
Winnepesaukee-  
Merrimack River

**NEW JERSEY**

Delaware River  
Passaic River  
Rahway River  
Raritan River

**NEW MEXICO**

Rio Grande River  
San Juan River-  
Morning Water Child

**NEW YORK**

Allegheny Rivers  
Beaverkill River  
Boquet River  
Bronx River  
Buffalo River  
Delaware River  
Genesee River  
Hudson River  
(Designated)  
Hudson River  
(at Sleepy Hollow)  
Minaus River  
Niagara River

**NORTH CAROLINA**

French Broad River  
Lower Cape Fear River  
Lower Neuse River  
Lower Roanoke River  
New River  
(Designated)  
Savannah River  
Yadkin/Pee-Dee River

**NORTH DAKOTA**

Missouri River  
Yellowstone River

**OHIO**

Black River  
Cuyahoga River  
(Designated)  
Great Miami River  
Mahoning River  
Maumee River  
Mill Creek  
Muskingum River  
Ohio River  
(two applications)



**OKLAHOMA**

Arkansas River

**OREGON**

Columbia River  
(in Columbia County)  
Willamette River  
(Designated)

**PENNSYLVANIA**

Allegheny River  
Delaware River  
Genesee River  
Lehigh River  
Ohio River  
Potomac River  
(Designated)  
Rivers of Steel  
Schuylkill River  
Swatara Creek  
Upper Susquehanna-  
Lackawanna Watershed  
(Designated)

**RHODE ISLAND**

Blackstone-  
Woonasquatucket River  
(Designated)

**SOUTH CAROLINA**

Black River  
Broad-Lower Saluda-  
Congaree Rivers  
Cooper River  
Edisto River  
Savannah River  
Waccamaw River

**SOUTH DAKOTA**

Missouri River

**TENNESSEE**

Cumberland River  
French Broad River  
Mississippi River  
(at Memphis)  
(Designated)  
Tennessee River  
(at Chattanooga)  
Tennessee River  
(in Decatur county)

**TEXAS**

Brazos River  
Rio Grande River  
(Designated)  
Rio Grande River  
(at Brownsville)  
Sabine River  
San Antonio River

**UTAH**

Jordan River  
San Juan River-  
Morning Water Child

**VERMONT**

Connecticut River  
(Designated)

**VIRGINIA**

James River  
Levisa River  
New River  
(Designated)  
Potomac River  
(Designated)  
Rappahannock River  
Tripps Run

**WASHINGTON**

Puyallup River  
Snohomish River

**WEST VIRGINIA**

Cheat River  
Kanawha River  
New River  
(Designated)  
Ohio River  
Potomac River  
(Designated)

**WISCONSIN**

Mississippi River  
(in Dubuque)  
Fox River  
Milwaukee River Basin  
Rock River  
Upper Mississippi River  
(Designated)  
Wolf River

**WYOMING**

Yellowstone River

## American Heritage Rivers Initiative: A Harbinger of Future White House Environmental Policy?

### AUTHORS NOTE

Subsequent to publication of “American Heritage Rivers Initiative: A Harbinger of Future White House Environmental Policy?” in February 1999, a United States Supreme Court decision upheld the American Heritage Rivers Initiative as a valid exercise of Executive Branch authority. The Court refused to review a decision of the United States Court of Appeals for the District of Columbia Circuit dismissing claims attacking the American Heritage Rivers Initiative. See *Helen Chenoweth, et al. v. William Jefferson Clinton, et al.*, 120 S. Ct. 1286 (2000) (denying certiorari). In addition to dismissal of all court claims against the initiative, legislative efforts by members of the U.S. House of Representatives and Senate to invalidate the initiative have also been unsuccessful. The author continues to maintain that the American Heritage Rivers Initiative is legally valid, and should be used as a model for other initiatives to improve natural resources, the economy, and the cultural heritage of river communities.

Thomas C. Downs  
Attorney  
Patton Boggs LLP  
2550 M Street, NW  
Washington, D.C. 20037  
November 20, 2000

Thomas C. Downs

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*Editors' Summary: In his 1997 State of the Union Address, President Clinton announced the American Heritage Rivers Initiative, which promotes the environmental, economic, historical, and cultural aspects of rivers and their surrounding communities. So far, 14 rivers have been designated as American Heritage Rivers under the Initiative. Critics, however, claim that the Initiative is not authorized by an act of Congress. This Article explores whether the Initiative is statutorily authorized by existing laws and regulations. It begins with a brief description of the Initiative's elements and the designation process. It then discusses the opposition to the Initiative, and the Administration's response to attacks made by some members of Congress. Next, the Article examines the statutory authority for the Initiative and suggests that it is implicitly authorized by a number of existing environmental protection and historic preservation statutes. It also provides a synopsis of a number of site-specific statutes that are applicable to each designated American Heritage River. The Article concludes that the Initiative's bottom-up, top-down approach has the potential to become a popular paradigm for creating federal environmental policy, and additional American Heritage River designations are likely if the Initiative is perceived as successful.*

In a decade marked by little new federal environmental legislation or regulation since the Clean Air Act Amendments of 1990, (1) the Clinton Administration has inaugurated a proactive environmental program centered around 14 American rivers. The American Heritage Rivers Initiative (Initiative), (2) created to promote the environmental, economic, historical, and cultural aspects of rivers and their river-communities, is being implemented by the White House and an interagency federal task force in the absence of express statutory authority. The Administration asserts that the Initiative recognizes the positive attributes of significant rivers, streamlines federal programs and services to help implement plans of river-communities for environmental protection and historic preservation, and makes the federal government more of a positive influence in river communities. Not surprisingly, opponents of environmental and land use regulation and of the Clinton Administration charge that the Initiative has a hidden political agenda intended to wrest control of private property or to impose federal controls on local government decisions. Several attacks have been leveled against the Initiative since its inception in early 1997, but the salient criticism is that it is not authorized by an act of Congress. While it is true that there is no single congressional enactment that specifically gave rise to or set forth the parameters of the Initiative, this Article considers whether the several elements of the Initiative are authorized by the panoply of environmental and historic protection legislation enacted over the past 50 years. This question is critical to the Initiative's success or failure and has important implications for future environmental and natural resources policy development at the federal level. If the Initiative is *not* authorized by statute, it probably will fail as a result of judicial and/or political attacks given the strenuous opposition to it in some quarters. If the Initiative is statutorily authorized, the White House could use this

innovative approach in other areas of environmental policy.

The Article begins with a description of the Initiative's elements and the process of designating American Heritage Rivers. It then the highlights attacks against the Initiative by some members of Congress and the Administration's responses to these attacks. Despite a lack of express authority, the Article argues that the Initiative is authorized by a number of existing statutory provisions in the areas of environmental protection and historic preservation. Finally, the Article concludes that the Initiative could be the harbinger of a new brand of "bully pulpit" environmentalism where the White House, lacking majority support in Congress, reaches out directly to local communities and calls on them to spearhead environmental programs. Indeed, if the Initiative is perceived as successful, the White House is likely to designate additional American Heritage Rivers and attempt similar programs in other areas of environmental and natural resources policy.

#### Elements of the Initiative

President Clinton announced the American Heritage Rivers Initiative in his 1997 State of the Union Address. (3) The White House described the Initiative as an effort to support "community-led efforts [relating to rivers] that spur economic revitalization, protect natural resources and the environment, and preserve our historic and cultural heritage." (4) The President issued an executive order (5) directing agencies to establish and implement the Initiative, and announcements defining its terms were published in the *Federal Register*. (6)

During the fall of 1997, the White House solicited nominations from communities wishing to have their rivers designated as one of the 10 American Heritage Rivers to be selected by the President in 1997. (7) The Administration anticipated that the

partnerships established under the Initiative would provide the federal government with an opportunity to study needs in designated areas and improve assistance to communities across the nation. (8)

The White House delegated initial development of the Initiative to an interagency task force that was instructed to review existing environmental, historic, and economic programs to determine how efforts could best be refocused to benefit communities. (9) The task force included representatives of the U.S. Departments of Agriculture (USDA), Commerce, Defense, Energy, Housing and Urban Development, the Interior (DOI), Justice, and Transportation, as well as the U.S. Environmental Protection Agency (EPA), the Advisory Council on Historic Preservation, the National Endowment for the Arts, the National Endowment for the Humanities, and the Smithsonian Institution. (10) The task force held informal hearings throughout the nation in 1997. (11)

Under the Initiative, the designated American Heritage Rivers are to receive a variety of federal services and funding. Each river that is designated as an American Heritage River by presidential proclamation shall be assigned a "River Navigator," a federal employee appointed to help implement each river-community's management and development plans and to serve as a liaison with federal agencies. (12) An interagency team of federal officials shall also be assigned to work with river-communities to identify technical and funding needs and to help facilitate delivery of appropriate federal services. (13) In addition, the Initiative instructs federal agencies to commit to a "good neighbor policy," seeking to prove that federal actions create only positive effects on river-communities. (14) It also directs the federal government to report about community-based projects on the Internet to promote economic revitalization, protection of natural resources and the environment, and historic and cultural preservation. (15)

The Administration's strategy for achieving benefits in designated American Heritage River areas is to require federal agencies to cooperate and coordinate their activities that concern those areas. (16) Federal agencies are to assist local governments in managing rivers, which may include providing targeted technical assistance and services. (17) Examples of technical services to be made available to designated areas might include assistance from U.S. Fish and Wildlife Service (FWS) biologists in conserving aquatic species; (18) assistance from U.S. Geological Survey (USGS) cartographers and surveyors in producing maps, aerial photographs, and other graphic depictions of watershed areas; (19) guidance from EPA on reducing or eliminating pollution from point and non-point sources; (20) and advice from historic preservationists within the National Park Service (NPS) or the Advisory Committee on Historic Preservation on protecting significant historic areas (21) along American Heritage Rivers or submerged in rivers. Presumably, work done in each of these areas by federal government contractors could also benefit river- communities. Moreover, in addition to in-kind services, the Clinton Administration has stated that grants will be made to implement measures to benefit rivers. (22) The Initiative also encourages private-sector involvement and support for river-community programs. (23)

### Attacks Against the Initiative

The Initiative was immediately greeted with strenuous opposition by some members of Congress. Legislation designed to block the Initiative was considered in both the House of Representatives (24) and the Senate, (25) but those efforts were unsuccessful. In December 1997, after the White House closed the application deadline for rivers competing in the Initiative's selection contest, several members of Congress filed an action in federal district court seeking to block the Initiative, an effort that failed when the court held that the plaintiffs lacked standing. (26)

In response to this congressional opposition, the White House implemented an opt-out policy that sought to preserve the Initiative while respecting the wishes of individual congressional opponents. Under this policy, "if a Member of Congress opposes the nomination of a river in his or her district, it means that a sufficient strength and diversity of support were not demonstrated for such a designation, and that the nomination did not satisfy that particular criteria." (27) This opt-out policy resulted in nine rivers and segments of 16 other rivers being eliminated from consideration. (28)

By implementing the opt-out procedure, the Administration addressed the concerns of opposing members of Congress, but avoided modifying elements of the Initiative. As a practical matter, its effect was to ensure that the home districts of congressional opponents would not be rewarded by constructive policy changes, technical assistance, or targeted funds that would flow from the Initiative. Thus, although the Administration publicly acknowledged the wishes of opponents, it is unlikely that congressional opponents derived any benefit from the opt-out policy.

Not surprisingly, the opt-out policy probably made the river selection process more political than substantive. The deliberations of the advisory committee that recommended the 10 rivers for designation were dominated by discussion of the political support for or opposition to each river. (29) As a result, discussions about the ecological, historical, and economic significance of each river were less significant.

Opponents of the Initiative raised several objections, including claims that it would result in federal efforts to wrest control of privately held lands, interfere with local zoning decisions, and violate constitutional rights. (30) But the theme common to all opponents is that the Initiative was not authorized by any act of Congress. (31) This argument presents an interesting question about the balance of powers and statutory interpretation,

one that has important implications for future environmental policy.

In defense of the Initiative, the White House claimed that the Initiative "is consistent with the existing authorities articulated by Congress in the National Environmental Policy Act [NEPA], (32) as well as other authorities granted to agencies (the National Historic Preservation Act [NHPA], (33) the Housing and Community Development Act, (34) the Federal Water Pollution Control Act [FWPCA] (35) and the Intermodal Surface Transportation Efficiency Act, (36) to name a few)." (37)

In fact, the stated "goal of the American Heritage Rivers Initiative is to support communities . . . within existing laws and regulations. (38) The White House also consistently stated that the Initiative creates no new regulatory requirements or rules. Instead, it makes better use of existing resources and personnel to assist river-communities in meeting their objectives. The Initiative was further described as consistent with the Administration's effort to "reinvent" government. (39)

### Argument: Initiative Programs Are Authorized by Existing Statutes

The White House has frequently cited NEPA as conferring authority on the Executive Branch to protect and enhance rivers and other natural resources. (40) In fact, NEPA § 101(b) provides broad instructions to the Executive Branch to maintain a progressive approach to environmental regulation: "[I]t is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve Federal plans, functions, programs, and resources" in order to protect the human environment. (41) This provision could be construed as providing a kind of meta-regulatory authority for environmental policy experimentation.

Opponents of the Initiative attacked the White House's claim that NEPA provides statutory authority: President Clinton states that the NEPA provides a grant of authority to establish the [American Heritage Rivers Initiative] under authority of Section 101(b) of the NEPA. This section only sets out the broad goal to be achieved by the NEPA; however, it provides no authority for action. The only authorities mandated to the executive 42 branch under the NEPA are to prepare reports .... (42)

NEPA is the overarching environmental policy statute, and its only express direction to Executive Branch agencies is to conduct environmental studies and make findings about potentially significant adverse environmental impacts. Critics are correct in stating that NEPA provides no clear-cut authority to develop river protection programs and dedicate federal employees and assets to implementation of such programs.

A review of relevant statutes, however, reveals that existing laws authorize all of the environmental and historical protective measures embodied in the Initiative. (43) In many instances, Congress has directed the Executive Branch to undertake research, outreach, and protective measures targeted at rivers and river-communities, involving both federal property and privately owned lands. As set forth below, these statutory provisions mirror elements of the Initiative.

#### *Existing Statutes Authorize Environmental Protections for Rivers*

A number of federal statutes provide authority to implement the basic objectives and to achieve the specific goals of the Initiative, but most of them were not discussed in the Administration's public statements concerning the Initiative. Perhaps the most important statute is the Wild and Scenic Rivers Act, which designates 154 rivers to be protected and preserved because of either their

"wild," or undeveloped, condition or their scenic value. (44) Critics of the Initiative pointed to this statute as an example of how they believe the Administration should have developed the American Heritage Rivers Initiative (i.e., recommend rivers for designation and have Congress designate rivers by statute). (45) Yet, the Act confers authority on the Executive Branch to undertake broad measures to protect rivers, including measures contemplated by the Initiative, and to designate segments of rivers as wild and scenic. (46) The Act also authorizes federal agencies to provide technical assistance to protect rivers. (47) As discussed below, several of the designated American Heritage Rivers have segments previously designated by Congress as wild and scenic or as potential additions to the wild and scenic river system. (48)

Under the Wild and Scenic Rivers Act, federal agencies are authorized to enter into cooperative agreements to protect designated wild and scenic rivers and adjacent lands, as well as rivers not so designated by Congress. (49) Moreover, the Act specifically requires federal agencies to cooperate with state and local governments to identify opportunities to protect rivers. (50) Federal agencies controlling lands that encompass or are adjacent to a designated wild and scenic river have broad discretion under the Act to protect the river by participating in its management, regulation, and planning. (51) Such actions may include entering into cooperative agreements with state or local governments. (52) In addition, federal managers must seek to protect the "esthetic, scenic, historic, archeological, and scientific features" of rivers. (53) Thus, the Act authorizes a degree of federal involvement in river protection that is considerably greater, and less flexible and locally driven, than is contemplated by the Initiative.

Other statutes authorize measures to protect fish and wildlife and their habitat, including rivers. Notably, the DOI has broad authority under the

Fish and Wildlife Coordination Act (54) to cooperate with other federal agencies, as well as with state and local governments and private organizations, to protect natural resources that provide habitat for fish and wildlife. (55) The DOI is also specifically authorized to survey and investigate watershed areas, and to recommend measures to reduce or eliminate pollution that is detrimental to fish and wildlife in navigable waters. (56) In addition, EPA has ample authority under the FWPCA to make grants to support research, development, and demonstration measures related to rivers. (57) Furthermore, several American Heritage Rivers empty into either the Atlantic Ocean, the Pacific Ocean, or the Gulf of Mexico, and statutes that protect coastal resources confer authority on EPA and other agencies to perform a variety of studies and surveys of coastal areas, which include portions of rivers emptying into oceans. (58)

#### *Existing Statutes Authorize Protection of Historic and Cultural Landmarks*

In the NHPA, Congress directs the federal government, in cooperation with nonfederal governments and the private sector, to "use measures, including financial and technical assistance, to foster conditions under which our modern society and our prehistoric and historic resources can exist in productive harmony and fulfill the social, economic, and other requirements of present and future generations." (59) Federal agency involvement is not restricted to federally owned or controlled lands. It is also the federal policy to "contribute to the preservation of non-federally owned prehistoric and historic resources and give maximum encouragement to organizations and individuals undertaking preservation by private means." (60) Moreover, these historic and cultural protection efforts can extend to significant historic resources submerged in rivers or located along riverbanks or in river-communities.



*Existing Statutes Authorize Programs Specifically Centered Around Designated American Heritage Rivers*

Rivers recognized by the President as American Heritage Rivers already are subject to statutory protections related to their natural or historic features. Even in the absence of the above-mentioned statutes applicable to rivers generally, a number of site-specific statutory protections also justify the protective measures anticipated by the Initiative. One or more of the designated rivers are managed or regulated by EPA, the U.S. Army Corps of Engineers, the DOI, the USGS, the NPS, the USDA, the International Boundary Waters Commission, or the International Joint Commission. The designated American Heritage Rivers and the applicable site-specific statutes are briefly identified below.

*Connecticut River.* The 390-mile Connecticut River is the boundary between Vermont and New Hampshire and flows through Massachusetts and Connecticut. The principal river-communities are Brattleboro, Vermont; Springfield, Massachusetts; and Hartford, Connecticut. The Connecticut River is the subject of federal research and oversight under the Silvio O. Conte National Fish and Wildlife Refuge Act. (61) Although the designated refuge is small—just a 3.8 acre island in Massachusetts—the statute authorizes the federal government to study and protect the fish and wildlife resources of the 7.2-million-acre Connecticut River watershed. (62) The Conte Act also authorizes the DOI to enter cooperative agreements “to interpret the Connecticut River’s aquatic and wildlife resources in the context of the region’s cultural, geological, and ecological history.” (63) Additionally, the watershed contains habitat for species protected under the Endangered Species Act (ESA), (64) including the endangered dwarf wedge mussel. (65)

*Cuyahoga River.* The Cuyahoga River in Ohio flows through the Cleveland and Akron areas. It has

been under federal jurisdiction since 1974, two years after the river caught fire as a result of severe pollution. The Cuyahoga Valley National Recreation Area was established by legislation that directs the DOI to preserve and protect “for public use and enjoyment, the historic, scenic, natural, and recreational values of the Cuyahoga River” and surrounding areas. (66) The DOI is required to evaluate areas of the Cuyahoga River region that are of historic or cultural significance, and to establish programs for their “preservation, restoration, interpretation, and utilization.” (67)

*Detroit River.* The 32-mile Detroit River in Michigan flows from Lake St. Clair into Lake Erie. It is part of the international boundary with Canada, and Detroit is its principal U.S. river-community. The Detroit River is a component of the Great Lakes system. (68) As such, the river is subject to national regulation and the jurisdiction of the International Joint Commission. Under FWPCA § 118, EPA is authorized to coordinate with other federal agencies and state and local governments to develop water quality strategies to protect the Detroit River and other portions of the Great Lakes system. (69) EPA is also authorized to conduct surveillance and water quality monitoring. (70) Additionally, FWPCA §108 authorizes grants for research and demonstration projects for controlling pollution in the Great Lakes system, including the Detroit River. (71) The river is also subject to the Aquatic Nuisance Prevention and Control Act. (72) Under this statute, the DOI must assess the effectiveness of federal efforts to prevent the introduction and spread of aquatic nuisance species into the Detroit River and other bodies of water. (73) The DOI also has standing authority to investigate portions of the Great Lakes watershed for the purpose of protecting anadromous fish. (74) Similarly, the USGS is authorized to survey the river and recommend plans for mapping its shorelines. (75)

*Hanalei River.* The 16-mile Hanalei River, on the island of Kauai in Hawaii, runs through the Hanalei National Wildlife Refuge. (76) The Hanalei Refuge was established in 1972 in order to protect habitat for rare Hawaiian waterbirds. Most of the refuge is closed to public use in order to protect fish and wildlife.

*Hudson River.* The 315-mile Hudson River in New York borders New Jersey at its southern end where it enters the Atlantic Ocean at New York City. Its principal river-communities in New York are Albany and New York City, and Jersey City in New Jersey. Protected areas within the Hudson River watershed include the Hudson River Valley National Heritage Area. (77) This area is governed by the Historic Sites, Buildings and Antiquities Act, which declares it to be “national policy to preserve for public use historic sites, buildings and objects of national significance for the inspiration and benefit of the people of the United States.” (78) At its mouth in the New York metropolitan area, the river empties into waters subject to EPA protection under the National Estuary Program, authorized by the FWPCA. (79)

*Mississippi River.* The Upper Mississippi and Lower Mississippi are designated as two separate American Heritage Rivers. The Lower Mississippi flows through Tennessee and Louisiana, and the Upper Mississippi flows through Minnesota, Wisconsin, Illinois, Iowa, and Missouri. Major river-communities include Minneapolis, Minnesota; Dubuque, Iowa; St. Louis, Missouri; Memphis, Tennessee; Baton Rouge, and New Orleans, Louisiana. A portion of the Upper Mississippi River in Minnesota, from its source at the outlet of Itasca Lake to its junction with the northwestern boundary of the city of Anoka, has been designated by Congress as a potential addition to the wild and scenic river system. (80) In addition, the FWS manages the Upper Mississippi River Wildlife and Fish Refuge, located along 284 miles of the Mississippi River Valley in Minnesota, Wisconsin, Iowa, and Illinois. (81)

The Lower Mississippi River is the situs of ongoing federal efforts to restore and enhance fish and wildlife resources. The FWS operates the Natchitoches National Fish Hatchery in the Lower Mississippi Valley area in Louisiana under a congressional enactment adopted in 1930. (82) Among other activities, the Natchitoches hatchery supplies largemouth bass, catfish, and bluegill fry for the Lower Mississippi River ecosystem, and it conducts ongoing cooperative fisheries restoration work with the Mississippi Interstate Cooperative Resources Association, the Corps, Louisiana, and other governmental and nonprofit entities. (83) This region also benefits from the Lower Mississippi Valley Joint Venture, led by the FWS. The Joint Venture utilizes grants under the North American Wetlands Conservation Act (84) to restore forested wetlands along the Lower Mississippi River in an effort to advance waterfowl conservation efforts. (85)

*New River.* The New River rises in western North Carolina and flows northeasterly through southwestern Virginia into West Virginia, passing through mostly rural communities. A segment of the New River in Virginia and West Virginia has been designated as a potential addition to the wild and scenic river system. (86)

*Potomac River.* The 285-mile Potomac River is the boundary between Maryland and West Virginia, and between Maryland, Virginia, and the District of Columbia. Its principal river-community is Washington, D.C. It is subject to the most federal control and regulation of all the designated American Heritage Rivers because much of the Potomac River shore in the District of Columbia and in nearby sections of Virginia and Maryland is federally owned or subject to federal statute. A number of nationally significant historic properties lie along the Potomac and are regulated pursuant to acts of Congress. For example, the Chesapeake and Ohio Canal National Historical Park includes 184.5 miles of canal areas bordering the Potomac River in Maryland, West Virginia, and the District of

Columbia. (87) In addition, the Potomac Heritage National Scenic Trail includes 704 miles of trail along the Potomac, and its enabling statute permits the government to study this area. (88) The DOI is required to conduct studies of the Potomac Heritage Trail in consultation with other agencies, state and local governments, and the private sector. (89) Several other parts of the Potomac are also subject to federal jurisdiction. For instance, the drainage of the south branch of the Potomac River in West Virginia is included in the Spruce Knob-Seneca Rocks National Recreation Area, adjacent to the Monongahela National Forest in West Virginia, and is under the jurisdiction of the USDA. (90) The Washington Aqueduct, which includes “dams, intake works, conduits, and pump stations that capture and transport raw water from the Potomac River to the Dalecarlia Reservoir,” (91) is under the control of the Corps. (92) Furthermore, segments of the riverbank under federal control also are included in Great Falls National Park, Glen Echo Park, the George Washington Memorial Parkway, and Theodore Roosevelt Island, all of which are part of the National Park System. In addition, tributaries of the Potomac include the Rock Creek in Rock Creek Park and the Minnehaha Creek in Glen Echo Park, which are both under the jurisdiction of the NPS.

*Rio Grande River.* The 1,885-mile Rio Grande River, flowing through Colorado, New Mexico, and Texas, is the border between the United States and Mexico for many miles. Its principal river-communities are Albuquerque, New Mexico, and El Paso, Texas. A 191.2-mile strip of the Rio Grande in the Chihuahuan Desert in Texas is designated as wild and scenic. (93) It begins in Big Bend National Park and continues downstream to the Terrell-Val Verde county line. A separate portion of the river in Texas, between the west boundary of Hudspeth County and the east boundary of Terrell County, is designated as a potential addition to the wild and scenic river system, (94) as are portions of the river

in New Mexico. (95) In addition, portions of the Rio Grande are managed by the NPS and the FWS as a national park, a national recreation area, and a national wildlife refuge. (96) Furthermore, under a statute associated with the International Boundary and Water Commission, which has jurisdiction over the portions of the Rio Grande River forming the U.S.-Mexican boundary, the President has broad power to construct and operate public works. (97)

*St. Johns River.* The 310-mile St. Johns River runs northerly from central to northeastern Florida and enters the Atlantic Ocean east of Jacksonville, which is the principal river-community. The St. Johns River region holds archaeological remains of Native American settlements dating from about 2000 B.C. The last three miles near the mouth of the St. Johns River are managed by the NPS as part of the Ticumuan Ecological and Historic Preserve in Jacksonville. (98) The Ticurnuan Preserve includes Kingsley Plantation on Fort George Island, the site of an early 19th century slave community, which offers a rare, well-preserved example of early African-American plantation life. Much of this area of the riverbank is privately owned, but is subject to cooperative management agreements involving the NPS, Florida, the city of Jacksonville, and private landowners. Regional NPS officials describe the current arrangement as comparable to that anticipated under the Initiative. In addition, the Fort Caroline National Memorial on the St. Johns was designated by Congress. (99) The river also holds the shipwrecked Civil War vessel “Maple Leaf,” a designated historical monument that contains significant military and civilian artifacts.

*Susquehanna and Lackawanna Rivers.* The Susquehanna and Lackawanna Rivers are designated as a single river system. The rivers flow through Pennsylvania and Maryland. The principal river-communities are Wilkes-Barre and Harrisburg, Pennsylvania. The Susquehanna River is subject to federal jurisdiction under the

Susquehanna River Basin Compact, and the Lackawanna River is included in the watershed area for purposes of that Act. (100) The Susquehanna River Basin Commission was established as a regional governmental entity with federal, state, and local participation “to effect comprehensive multiple purpose planning for the conservation, utilization, development, management, and control of the water and related natural resources of the basin.” (101) The Commission is authorized to cooperate with all levels of government and the private sector to ensure appropriate water resources planning within the Susquehanna River basin. (102) In addition, the Susquehanna River watershed contains habitat for the bog turtle, (103) a species designated as threatened under the ESA, and for the endangered dwarf mussel, (104) and thus the area is deserving of federal statutory protection. Furthermore, Susquehanna Piedmont Gorge, which includes a 17-mile stretch of the Susquehanna River in Lancaster and York counties in Pennsylvania, has been designated a national natural landmark. (105) And a 1.25 acre island at the mouth of the Susquehanna River, where it empties into the Chesapeake Bay in Maryland, holds a historic lighthouse and is a part of the Blackwater National Wildlife Refuge. (106)

*Willamette River.* The 274-mile Willamette River in northern Oregon passes through the Willamette National Forest, which is a unit of the Oregon Cascades Recreation Area, under the jurisdiction of the USDA. (107) Its principal river communities are Portland and Salem.

*Woonasquatucket and Blackstone Rivers.* The Woonasquatucket and Blackstone Rivers, which are designated as a single river system, flow through Massachusetts and Rhode Island. Their principal river-communities are Worcester, Massachusetts, and Providence, Rhode Island. Although this system apparently is not covered by site specific statutory provisions, there are more

than 5,000 buildings in the vicinity listed on the National Register of Historic Places, and thousands more eligible for listing. (108) In addition, the watershed reportedly provides habitat for more than 60 endangered and threatened species. (109)

### **Possible Effects of the Initiative on Environmental Policy**

#### *A Potentially Popular and Successful Paradigm for Creating Federal Environmental Policy*

The Clinton Administration has developed a potentially popular and successful paradigm for environmental policy, which is articulated by the President and shaped by local communities and seems to be compatible with the philosophy of the Republican-controlled Congress. The Initiative, purportedly designed to be “voluntary and locally driven,” (110) embodies this unique bottom-up, top down approach to environmental policy by setting overarching federal government objectives, while allowing local communities to determine the shape of programs based on local conditions. Thus, the Initiative comports both with the Administration’s “reinvention” theme and with Republicans’ preference for flexibility and greater local government and private-sector control in setting environmental policy over traditional command-and-control regulation.

It is no small feat to succeed in a bottom-up, top-down approach to federal policy, one which seeks to infuse into federal programs fresh ideas introduced by municipalities, corporations, and citizens groups. For some federal employees in the field, such as park rangers, interpretive personnel, and wildlife refuge managers, dealing with public and local government representatives is often routine, but for career officials in Washington, D.C., the idea of continually adapting federal policy to give effect to local proposals runs counter to the traditional federal government role. Therefore, in order for enduring partnerships to be

formed, it will probably be necessary for some career federal workers to be retrained or assisted by third-party facilitators.

A successful example of this bottom-up, top-down approach to environmental policy is the brownfields program. As with the Initiative, the brownfields program was not created by a specific act of Congress, but was developed by the Administration based on its authority under the Comprehensive Environmental Response, Compensation, and Liability Act (111) and other statutes. Under the brownfields program, local communities must prove to the federal government that they have developed a plan for addressing the remedial needs of sites that are moderately contaminated by hazardous substances. To be awarded EPA brownfields grants, applicants must show that they have developed a grass-roots consensus and have assembled necessary local government and private-sector partners to participate in the effort to clean up and redevelop blighted areas. (112) Thus, like the Initiative, the overall framework established by the brownfields program encourages locally driven plans for environmental improvement, and it provides technical, financial, and other forms of federal support to give effect to locally developed plans.

With the continuation of the political status quo for the next two years, with Republican control of the Congress and Democratic control of the White House, it is probable that similar efforts will be attempted by the Clinton Administration if the Initiative is perceived to be successful. If Congress continues the trend of the past decade, retaining existing environmental laws, and failing to legislate new environmental programs, and if the White House continues its proactive environmental stance, there may be other instances in which it is necessary to utilize authority under decades-old statutes to launch innovative programs. In addition to the laws cited

above, there are numerous other statutes that authorize discretionary measures, grant-making ability, cooperative agreements, etc. These statutes may provide authority to establish other bottom-up, top-down efforts to enhance environmental conservation.

For example, the Administration may decide to launch a coordinated, interagency effort to protect the nation's lakes against runoff and other nonpoint sources of pollution, an effort that would probably be actively supported by local conservation groups and the sport fishing community. While the FWPCA may not clearly authorize a comprehensive program to prevent nonpoint source pollution of lakes, (113) it is possible that a combination of statutes authorizing measures by EPA, the USDA, the DOI, and the Corps collectively would justify a coordinated lake protection effort.

Similarly, aquifers could be targets for coordinated protection efforts. Aquifers often serve as sources of public drinking water, but frequently are located beneath privately owned land. Given EPA's existing Sole-Source Aquifer Demonstration (114) and Wellhead Protection Programs, (115) and the authority of the USGS and other agencies, it is possible that there exists sufficient legal justification for a new interagency aquifer protection initiative. Such an effort most likely would be strongly supported by municipal water authorities and local public health organizations.

#### *Future American Heritage River Designations*

Given the controversy that greeted the Initiative on Capitol Hill, it is possible that the White House will not expand the Initiative beyond the presently designated 14 rivers. However, if the Initiative turns out to be the popular experiment it is intended to be, it should win new supporters and be a model for successful environmental regulation. In the event that the Initiative receives favorable reviews from the public, local

governments, and private-sector leaders, additional American Heritage River designations are likely. In fact, the White House has suggested that there may be future rounds of river designations, (116) and the authority of the advisory committee that made the initial recommendations for the American Heritage River designations is not scheduled to terminate until April 2000. (117) Moreover, if the Administration selects another group of American Heritage Rivers that already are subject to site-specific federal statutes, there now exists ample legal justification and precedent to successfully include them under the Initiative's blanket of statutory authority.

#### **Conclusion**

The enthusiasm with which river-communities around the nation embraced the Clinton Administration's American Heritage Rivers Initiative, with its emphasis on local efforts, should be an incentive for the White House to develop similar programs in the future, particularly when the Congress is controlled by uncooperative political opponents. It is too early to tell how successful a paradigm the Initiative will be, however, because several government agencies must cooperate completely with each other and with the designated river-communities. This innovative approach to problem solving should be used again by the White House if agencies join together enthusiastically in collaborative environmental, cultural, and economic projects, without undue concern for rigid adherence to their respective positions within governmental hierarchies. As established by this Article, the Initiative is statutorily authorized. As such, its proponents should continue to defeat congressional and judicial challenges. Moreover, if congressional leaders ultimately recognize the merits of this method of problem solving, efforts to curb this element of presidential power will be curtailed.

The author is an attorney in the Washington, D.C., office of Patton Boggs LLP. Patton Boggs represents the city of Jacksonville, Florida, and assisted in the city's successful effort to have the St. Johns River designated as an American Heritage River. Mr. Downs can be reached at [tdowns@pattonboggs.com](mailto:tdowns@pattonboggs.com).

1 Pub. L. No. 101-549, 104 Stat. 2399 (codified at 42 U.S.C. §§7401-7671q, ELR Stat. CAA §§101-618).

2 Exec. Order No. 13061, 62 Fed. Reg. 48445 (Sept. 11, 1997), ELR ADMIN. MAT. II 45091.

3 "Tonight, I announce that this year I will designate 10 American Heritage Rivers, to help communities alongside them revitalize their waterfronts and clean up pollution." President William J. Clinton, State of the Union Address (Feb. 4, 1997).

4 Council on Environmental Quality (CEQ), Description of American Heritage Rivers Initiative and Information on How Communities Nominate Their Rivers, 62 Fed. Reg. 48860, 48861 (Sept. 17, 1997) [hereinafter Description of American Heritage Rivers Initiative].

5 Exec. Order No. 13061, *supra* note 2. 6 *See, e.g.*, CEQ, American Heritage Rivers Initiative; Proposal With Request for Comments, 62 Fed. Reg. 27253 (May 19, 1997) [hereinafter Proposal With Request for Comments]; Description of American Heritage Rivers Initiative, *supra* note 4.

7 Eventually the White House designated 14 rivers on July 27, 1998. *See* The White House, Vice President Gore Announces 14 "American Heritage River" Designations (July 27, 1998) (press release). 8 *See* Exec. Order No. 13061, §1(i), *supra* note 2, at 48445, ELR ADMIN. MAT. II at 45091 (directing agencies to assess effectiveness of the Initiative and recommend changes to improve delivery of federal services).

9 *See id.* at 48447, ELR ADMIN. MAT. II at 45092.

10 Description of American Heritage Rivers Initiative, *supra* note 4, at 48861.

11 *Id.*

12 Proposal With Request for Comments, *supra* note 6, at 27254. The River Navigator most likely would be a federal manager holding a field position in close proximity to

designated river-communities, whose responsibilities include stewardship of natural and/or historic resources. That individual's agency, whether EPA, the DOI, the USDA, or another agency, most likely would become the "lead agency" for local implementation of the Initiative.

13 *Id.*

14 *Id.* This goal of the Initiative has obvious appeal. As a practical matter, however, it remains to be seen how federal agencies will ensure that their actions produce only positive results. Moreover, this policy could be used by a variety of interests to serve objectives that are unrelated to the Initiative (e.g., one might argue that agencies should be enjoined from taking any actions in American Heritage River watersheds and river-communities that have not been demonstrated to have positive effects).

15 *Id.* at 27256.

16 See Exec. Order No. 13061, *supra* note 2, at 48445, ELR ADMIN. MAT. II at 45092.

17 *Id.* at 48447, ELR ADMIN. MAT. II at 45092.

18 See *American Heritage Rivers Initiative Oversight Hearings Before the House Comm. on Resources*, 105th Cong. 6 (1997) [hereinafter *Oversight Hearings*] (statement of Kathleen A. McGinty, Chair, CEQ) (stating that the Initiative seeks to "protect wetlands and endangered species").

19 See CEQ, *Proposal With Request for Comments - Re-Issue of May 19, 1997 Notice With Clarification Section and Revised Schedule*, 62 Fed. Reg. 33647, 33649 [hereinafter *Re-Issue of Notice*] ("high quality aerial photography and maps" will be provided).

20 See Description of American Heritage Rivers Initiative, *supra* note 4, at 48864 (stating that Initiative will support "pollution prevention activities").

21 See *id.* (explaining that Initiative is to provide assistance with cultural interpretative programs).

22 See Exec. Order No. 13061, *supra* note 2, at 48447, ELR ADMIN. MAT. II at 45092.

23 *Id.* at 48445, ELR ADMIN. MAT. II at 45091.

24 Legislation was introduced in the House, H.R. 1842, 105th Cong. (1997), by Rep. Helen Chenoweth (R-Idaho) to block the Initiative, and committee hearings were held. See

*Oversight Hearings*, *supra* note 18; *Hearings on Blocking American Heritage Rivers Initiative Before the House Comm. on Resources*, 105th Cong. (1997) [herein after *Hearings on Blocking Initiative*] (considering views of the Clinton Administration, members of Congress, and nongovernmental organizations on legislation restraining implementation of the Initiative). The House Committee on Resources voted 15 to 8 to approve H.R. 1842 on October 22, 1997. However, the committee never filed its report on the bill, and it was never brought to a vote by the full House.

25 A measure was offered by Sen. Tim Hutchinson (R - Ark.) that would have required the Initiative to be submitted for congressional consideration before final promulgation. Amend. No. 1196 to H.R. 2107, 105th Cong. (1997). That measure was tabled by the Senate on a 57 to 42 vote on September 18, 1997.

26 Four members of the House of Representatives filed suit in the U.S. District Court for the District of Columbia seeking to enjoin the Initiative. That suit was dismissed for lack of standing in the spring of 1998. See *Chenoweth v. Clinton*, 1998 WL 95216 (D.D.C. Mar. 2, 1998).

27 CEQ, *Description of Administration Policy Regarding Congressional Opposition to Designation of American Heritage Rivers*, 63 Fed. Reg. 25479 (May 8, 1998).

28 See *id.* at 25480.

29 The Administration delegated the task of reviewing 126 applications and selecting an initial list of 10 rivers to a federal advisory committee. See Exec. Order No. 13080, 63 Fed. Reg. 17667 (Apr. 10, 1998), ELR ADMIN. MAT. II 45094 (establishing American Heritage Rivers Initiative Advisory Committee). The advisory committee was chaired by documentary writer-producer Dayton Duncan and consisted of professionals including a geographer, two former mayors, and two watershed managers. See The White House, Naming Chair and Members of the American Heritage Rivers Initiative Advisory Committee (Apr. 8, 1998) (press release).

30 See HERITAGE FOUND., GOOD POLITICS, BAD POLICY: CLINTON'S AMERICAN HERITAGE RIVERS INITIATIVE (1998) (raising concerns about violation of constitutional separation of powers, Tenth Amendment protections through interference with states' rights to regulate intrastate activities, and the Property Clause in Executive Branch determination of its use of federal property); *Hearings on Blocking Initiative*, *supra* note 24, at 3-7 (statement of William Perry Pendley, Mountain States Legal Foundation

(raising constitutional arguments against the Initiative).

31 See, e.g., HERITAGE FOUND., *supra* note 30, at 5 ("Congress has not designated or dedicated any federal lands for the [Initiative], or authorized the development of the [Initiative] . . ."); *Hearings on Blocking Initiative*, *supra* note 24, at 5 (statement of William Perry Pendley, Mountain States Legal Foundation); Margaret Kriz, *A Choppy Start for Heritage Rivers*, 30 NAT'L J. 1064 (1998) (reporting that opponents charge "program is illegal because it was created by executive order, and not by Congress").

32 42 U.S.C. §§4321 - 4370d, ELR STAT. NEPA §§2-209.

33 16 U.S.C. §§470-470w-6.

34 Pub. L. No. 102 -240 , 105 Stat. 1914 (codified as amended at scattered sections of the U.S.C.) (1991).

35 33 U.S.C. §§1251 - 1387, ELR STAT. FWPCA §§101- 607.

36 Pub. L. No. 102 -550, 106 Stat. 3672 (codified as amended at scattered sections of the U.S.C.) (1992).

37 Proposal With Request for Comments, *supra* note 6, at 27253; see also *Oversight Hearings*, *supra* note 18, at 6 (statement of Kathleen A. McGinty, Chair, CEQ) (stating that "Initiative in fact is based on the policies articulated by Congress NEPA").

38 Proposal With Request for Comments, *supra* note 6, at 27253; see also *Oversight Hearings*, *supra* note 18, at 2 (statement of Kathleen A. McGinty, Chair, CEQ) (testifying that Initiative "will create no new regulatory requirements or rules [but] will use existing federal resources more effectively to assist communities").

39 See *Oversight Hearings*, *supra* note 18, at 1 (statement of Kathleen A. McGinty, Chair, CEQ) (observing that the White House's "approach embodies the Administration's effort to reinvent government in accordance with the National Performance Review"); see also Proposal With Request for Comments, *supra* note 6, at 27253.

40 See Exec. Order No. 13061, *supra* note 2, 48445, ELR ADMIN. MAT. II at 45092 (citing NEPA as authority); see also 42 U.S.C. §433 1 (b), ELR STAT. NEPA §101(b) (providing for continuing authority to improve environmental regulation); *id.* §4332(2)(B), ELR STAT. NEPA § 102(2)(B) (directing federal agencies to identify and develop means to integrate environmental considerations with economic and technical considerations). Critics of the Initiative countered that NEPA



only authorizes issuance of environmental impact statements and other environmental reviews. *See infra* text accompanying note 41.

41 42 U.S.C. §4331(b), ELR STAT. NEPA §101(b).

42 HERITAGE FOUND., *supra* note 30, at 4.

43 This Article does not include an analysis of federal statutes authorizing Executive Branch measures to promote the economic vitality of rivers or river- communities. Suffice it to say that navigable water-ways are unquestionably within federal economic jurisdiction under the U.S. Commerce Clause. *See* U.S. CONST. art. 1, §8, cl. 3.

44 16 U.S.C. §§1271-1287.

45 *See* HERITAGE FOUND., *supra* note 30, at 5.

46 *See Newton County Wildlife Ass'n v. U.S. Forest Serv.*, 113 F.3d 110, 112, 28 ELR 20020 (8th Cir. 1997) (The Act “authorizes Congress or a responsible federal agency to designate river segments that possess ‘outstandingly remarkable’ environmental or cultural values as ‘components of the national wild and scenic rivers system.’”) (emphasis added).

47 *See* 16 U.S.C. §1282(a).

48 *See infra* notes 61- 109 and accompanying text.

49 16 U.S.C. §1283(a).

50 *See id.* §1282(a) (“The Secretary of the Interior shall encourage and assist the States to consider . . . needs and opportunities for establishing State and local wild, scenic and recreational river areas.”) (emphasis added).

51 *See id.* §1283(a) (Any “Federal department or agency having Jurisdiction over any lands which include, border upon, or are adjacent to, any river included within the National Wild and Scenic Rivers System or under consideration for such inclusion . . . shall take such action respecting management policies, regulations, contracts, plans, affecting such lands . . . as may be necessary to protect such rivers in accordance with the purposes of this chapter.”).

52 *See id.*; *see also id.* §1281 (e).

53 *Id.* §1281(a).

54 *See* 16 U.S.C. §§661- 666c.

55 *See id.* §661 (The DOI may “provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of all species of wildlife, resources thereof, and their habitat . . .”).

56 *See id.* §757f.

57 EPA authority to make grants is conferred under 33 U.S.C. §1254(b), ELR STAT. FWPCA §104(b) (grants relating to water pollution); *id.* §1254(i), ELR STAT. FWPCA §104(i) (grants relating to removal of oil or hazardous substances from any waters); *id.* §1254(r), ELR STAT. FWPCA §104(r) (grants to support freshwater aquatic system research); *id.* §1254(s), ELR STAT. FWPCA §104(s) (grants regarding interdisciplinary studies on river systems); *id.* §1255(a), ELR STAT. FWPCA §105(a) (grants for research on preventing discharges of pollutants into any waters); *id.* §1255(b), ELR STAT. FWPCA §105(b) (grants relating to pollution control in river basins); *id.* §1255(c), ELR STAT. FWPCA §105(c) (grants for reducing industrial discharges into any water); and *id.* §1255(e), ELR STAT. FWPCA §105(e) (grants for reducing pollution from agriculture).

58 For example, the U.S. Department of Commerce is authorized to prepare hydrographic and topographic surveys, observe tides and currents, conduct geodetic-control surveys and field surveys for aeronautical charts, among other studies of marine and coastal environments. *See* 33 U.S.C. §883a. Under the National Estuary Program, EPA provides assistance to local planners in designated estuarine areas, which may include segments of rivers. *See* 33 U.S.C. §1330, ELR STAT. FWPCA §320.

59 16 U.S.C. §470- 1(1).

60 *Id.* §470 -1(4).

61 Pub.L. No. 102-212, 105 Stat. 1655 (1991).

62 *Id.* §107(b), 105 Stat. at 1657.

63 *Id.* §109(b)(3), 105 Stat. at 1659.

64 16 U.S.C. §§1531 - 1544, ELR STAT. ESA §52- 18.

65 *See* U.S. FWS, Determination of Endangered Status for the Dwarf Wedge Mussel, 55 Fed. Reg. 9447, 9448 (Mar. 14, 1990).

66 16 U.S.C. §460ff.

67 *Id.* §460ff-3(d).

68 The Detroit River, with about 90 percent of its water flowing into Lake Erie, is consistently referred to as a part of the Great Lakes system. It is included in the statutory definition of “the Great Lakes” as used in the FWPCA and other laws. *See* 33 U.S.C. §1268(a)(3)(B), ELR STAT. FWPCA §118(a)(3)(B); *see also* 16 U.S.C. §4702(7).

69 *See* 33 U.S.C. §1268(c)(1)(E), ELR STAT. FWPCA §118(c)(1)(E).

70 *Id.* §1268(c)(1)(B), ELR STAT. FWPCA §118(c)(1)(B). The Agency has issued guidance for water quality control efforts in the Great Lakes system under authority of FWPCA §118(c)(2). The guidance identifies minimum water quality standards, antidegradation policies, and implementation procedures. *See* 40 C.F.R. §132.2 (1997).

71 33 U.S.C. §1258, ELR STAT. FWPCA §108.

72 *See* 16 U.S.C. §§4701-4751; *id.* §4702(7).

73 *Id.* §47111(e)(1).

74 *See* 16 U.S.C. §757b. The DOI is authorized “to conduct such studies and make such recommendations as the Secretary determines to be appropriate regarding the development and management of any stream or other body of water for the conservation and enhancement of anadromous fishery resources and the fish in the Great Lakes . . . that ascend streams to spawn . . .” *Id.*

75 *See* Pub. L. No. 100-220, subtit. B, §3202, 101 Stat. 1475-1477 (1987).

76 *See* U.S. FWS, *Kauai NWR Complex ( Kilauea Point , Hanalei, Huliea NWRs)* (visited Nov. 3, 1998) <http://www.rl.fws.gov/test/hawaii.html#kauai>

77 *See* Pub. L. No. 104 - 333, tit. IX, 110 Stat. 4275 (1996); Pub. L. No. 105- 83, 111 Stat. 1595, 1597 (1997).

78 16 U.S.C. §§461- 467; *id.* §461.

79 33 U.S.C. §1330, ELR STAT. FWPCA §320.

80 *See* 16 U.S.C. §1276(53).

81 *See* U.S. FWS, *Upper Mississippi River National Wildlife*

and Fish Refuge (last modified Nov. 17, 1998) [http://www.emte.nbs.gov/umr\\_refuge.html](http://www.emte.nbs.gov/umr_refuge.html); see also 16 U.S.C. §§721-731 (authorizing creation and operation of Upper Mississippi National Wildlife Refuge).

82 White Act, 46 Stat. 371 (1930).

83 See U.S. FWS, *Natchitoches National Fish Hatchery* (visited Nov. 1, 1998) <http://www.fws.gov/r9af/r4nnfh.html>.

84 16 U.S.C. §54401-4414.

85

86 See U.S. FWS, *Lower Mississippi Valley Joint Venture* (visited Nov. 1, 1998) <http://www.fws.gov/r9nawwo/lmv95.html>. See 16 U.S.C. §1276(134). Scientist believe the New River is North America's oldest river, having been created some 320 million years ago when the Appalachian Mountains were formed. CEO, *New River: North Carolina, Virginia, and West Virginia* (visited Nov. 3, 1998) <http://www.whitehouse.gov/CEO/Rivers/new.html>.

87 16 U.S.C. §401y-1.

88 See *id.* §1244(a)(11).

89 See *id.* §1244(b), (c)(2).

90 See *id.* §460p-1.

91 Pub. L. No. 104-182, tit. III. §306(a)(4)(A), 110 Stat. 1685 (1996).

92 See 40 U.S.C. §45.

93 See 16 U.S.C. §1274(17).

94 *Id.* §1276(20).

95 *Id.* §1276(135).

96 Big Bend National Park, managed by the NPS, includes over 118 miles of the Rio Grande. See 16 U.S.C. §§ 156 -158. Additionally, the Amistad National Recreation Area borders the river in Texas, and also covers a section of the Pecos River, a principal Rio Grande tributary. See 16 U.S.C. §460ff. The Lower Rio Grande River National Wildlife Refuge was established in 1994. See Rio Grande Designation Act, Pub. L. No. 103 - 242, 108 Stat. 611 (1994).

97 "The President is authorized and empowered to construct, operate, and maintain on the Rio Grande River below Fort Quitman, Texas, any and all works or projects which are recommended to the President . . . and by the President are (sic) deemed necessary and proper." 22 U.S.C. §277a.

98 See 16 U.S.C. §698.

99 See Act of Sept 21, 1950, ch. 973, 64 Stat. 897.

100 Pub. L. No. 91- 575, 84 Stat. 1509 (1970).

101 18 C.F.R. §801.0(a) (1998).

102 See *id.* §801.0(c)(1), 801.2.

103 See U.S. FWS, Final Rule to List the Northern Population of the Bog Turtle as Threatened and the Southern Population as Threatened Due to Similarity of Appearance, 62 Fed. Reg. 59605, 59616 (Nov. 4, 1997).

104 Determination of Endangered Status for the Dwarf Wedge Mussel, *supra* note 63, at 9448.

105 See Heritage Conservation and Recreation Service, National Registry of National Landmarks, 46 Fed. Reg. 17891 (Mar. 20, 1981).

106

107 Telephone Interview with the staff of the Blackwater National Wildlife Refuge (July 22, 1998). See 16 U.S.C. §460oo.

108 CEO, *Blackstone and Woonasquatucket Rivers, Rhode Island, Massachusetts* (visited Nov. 3, 1998) <http://www.whitehouse.gov/CEO/Rivers/blackstone.html>

109 *Id.* 110 Description of American Heritage Rivers Initiative, *supra* note 4, at 48860.

111 42 U.S.C. §§9601-9675, ELR Stat, CERCLA §§101-405.

112 See generally U.S. EPA, *Brownfields* (last modified Nov. 12, 1998) <http://www.epa.gov/swerosps/bf/>.

113 FWPCA §319 authorizes technical assistance and grants to support efforts to prevent nonpoint source pollution. 33 U.S.C. § 1329, ELR STAT. FWPCA §319. In addition, EPA's

Clean Lakes Program provides for grants and demonstration programs geared toward improving the quality of lakes. *Id.* § 1324, ELR STAT. FWPCA §314.

114 42 U.S.C. §300h-6, ELR STAT. SDWA §1427.

115 *Id.* §300h -7, ELR STAT. SDWA §1428.

116 See Exec. Order No. 13061, *supra* note 2, at 48446, ELR ADMIN. MAT. II at 45092 ("ten rivers will be designated in the first phase of the initiative"); Re-Issue of Notice, *supra* note 19, at 33650 ("The experience gained from the designated rivers and the level of community support for the initiative will guide future river designations.").

117 See Exec. Order No. 13080, *supra* note 29, at 17667, ELR ADMIN. MAT. II at 45094.